

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5932 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PARSOTTAM @ PASIYA S/O. SANMAKHDAS BHAVANI

Versus

POLICE COMMISSIONER OF RAJKOT

Appearance:

MR RD GAGDEKAR for Petitioner

MR HH PATE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/12/1999

ORAL JUDGEMENT

#. The petitioner is a detenu under the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Rajkot City, Rajkot on March 1, 1999, passed in exercise of powers under Section 3(1) of the PASA Act.

#. The grounds of detention indicate that the

detaining authority took into consideration seven offences registered against the petitioner. The authority also took into consideration statements of two witnesses involving the petitioner in activities detrimental to public order and the detaining authority, therefore, observed that although the petitioner is under custody, he is likely to apply for bail and get bail. The authority also recorded that, after being released on bail, the petitioner may continue his illegal and anti-social activities. Resorting to less drastic remedies may not serve the purpose of immediately preventing the petitioner from pursuing his illegal and anti-social activities and, therefore, detention under PASA is the only remedy than can be resorted to and the detaining authority, therefore, passed the order impugned in this petition.

#. The petitioner has approached this Court with this petition under Article 226 of the Constitution assailing the order of detention on various grounds, mainly that the petitioner was in judicial custody when the order of detention was passed. The detaining authority was aware about this and the authority on a hypothesis that the petitioner may apply for bail, may get bail and may pursue his illegal activities, the order is passed. This hypothesis was cultivated by the detaining authority without any basis and, therefore, the order is bad. Another contention that is raised is that the documents demanded by the detenu, which are relevant, have not been supplied by the detaining authority.

#. Heard Mr. Gagdekar, learned advocate for the petitioner. He has placed reliance on the above two grounds and submitted that the petition may be allowed.

#. Mr. H.H. Patel, learned Assistant Government Pleader, has opposed this petition. He submitted that the detaining authority took into consideration various aspects of the case, arrived at a subjective satisfaction and then passed the order. The Court, therefore, may not interfere with the order passed.

#. A glance that the grounds of detention indicates that the detaining authority was conscious of the fact that the petitioner was not bailed out when the order was passed and was in judicial custody. The authority also recorded that in all those cases, the petitioner may apply for bail and may pursue his illegal and anti-social activities after being released on bail and may endanger the public order of City of Rajkot. The detaining authority has not taken into consideration the fact that

its apprehension of the petitioner applying for bail and getting bail had no foundation. In fact, that ground was non-existent at that point of time (Abdul Razak Abdul Wahab Shaikh v. S.N. Sinha, Commissioner of Police, Ahmedabad & Another, AIR 1989 SC 2265).

#. In view of the fact that the order is passed on an irrelevant factor, the subjective satisfaction arrived at by the detaining authority would stand vitiated. When the ground was not in existence, namely, application of bail by the petitioner, the necessity for passing the order of detention under the PASA Act for immediately, preventing the petitioner from continuing his illegal and anti-social activities cannot be said to be genuine and, therefore, the petition deserves to be allowed on this ground alone.

#. In the result, this petition is allowed. The order of detention dated March 1, 1999, in respect of the petitioner-Parshotam @ Pasiyo s/o Sanmukhdas Bhavani, is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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